

1 JOHN M. JULIUS III, Bar No. 112640  
 2 LITTLER MENDELSON  
 A Professional Corporation  
 501 W. Broadway  
 3 Suite 900  
 San Diego, CA 92101-3577  
 4 Telephone: 619.232.0441

5 Attorneys for Defendant ROSS STORES, INC.  
 d.b.a. ROSS DRESS FOR LESS #478

6

7

8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 OUTERBRIDGE ACCESS  
 11 ASSOCIATION SUING ON BEHALF OF  
 DIANE CROSS, AND ITS MEMBER;  
 12 DIANE CROSS, An Individual,

13 Plaintiff,

14 v.

15 ROSS DRESS FOR LESS, INC. d.b.a.  
 ROSS DRESS FOR LESS #478; MANNA  
 16 DEVELOPMENT GROUP, LLC d.b.a.  
 PANERA BREAD #4279; MIRA MESA  
 17 MARKETPLACE EAST, LLC; AND  
 DOES 1 THROUGH 10, INCLUSIVE

18 Defendants.

19 Case No. 08 CV 0045 BTM CAB

20 DEFENDANT ROSS STORES, INC.'S  
 ANSWER TO COMPLAINT AND  
 AFFIRMATIVE DEFENSES

21 Complaint filed: 1/8/2008

22 Defendant ROSS STORES, INC. ("ROSS STORES"), sued herein as ROSS DRESS  
 23 FOR LESS, INC. d.b.a. ROSS DRESS FOR LESS #478 and referred to herein as "Defendant,"  
 responds to the Complaint ("Complaint") filed by Plaintiffs OUTERBRIDGE ACCESS  
 24 ASSOCIATION SUING ON BEHALF OF DIANE CROSS, and DIANE CROSS, An Individual  
 ("Plaintiffs") in the above-captioned matter as follows:

25 1. Answering the allegations set forth in Paragraph 1 of the Complaint,  
 26 Defendant admits that Plaintiff Diane Cross has initiated a lawsuit pertaining to the listed properties  
 and facilities, that one of the entities sued is Ross, and that the lawsuit alleges discrimination.

27 Firmwide:84949868.1 022233.2185

28 DEFENDANT ROSS STORES, INC.'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

1 Except as so expressly admitted and with regard to any and all remaining allegations in Paragraph 1,  
 2 Defendant denies each and every allegation contained therein.

3       2. Answering the allegations set forth in Paragraph 2 of the Complaint,  
 4 Defendant admits that this Court has jurisdiction over the above-captioned matter and that venue is  
 5 proper. Except as so expressly admitted and with regard to any and all remaining allegations in  
 6 Paragraph 2, Defendant denies each and every allegation contained therein.

7       3. Answering the allegations set forth in Paragraph 3 of the Complaint,  
 8 Defendant admits that this Court may exercise supplemental jurisdiction over the state law claims set  
 9 forth in the above-captioned matter. Except as so expressly admitted and with regard to any and all  
 10 remaining allegations in Paragraph 3, Defendant denies each and every allegation contained therein.

11       4. Answering the allegations set forth in Paragraph 4 of the Complaint,  
 12 Defendant admits that it is the lessee of the business operating as Ross Dress For Less #478.  
 13 Defendant lacks sufficient information and belief upon which to admit or deny the allegations with  
 14 respect to other parties referenced in this paragraph and, based on that ground, denies generally and  
 15 specifically those allegations. Defendant denies each and every other allegation contained therein as  
 16 they pertain to Ross Dress For Less, Inc.

17       5. Answering the allegations set forth in Paragraph 5 of the Complaint, these  
 18 allegations do not require a response.

19       6. Answering the allegations set forth in Paragraph 6 of the Complaint,  
 20 Defendant denies each and every allegation contained therein as they pertain to Ross Dress For Less,  
 21 Inc.

22       7. Answering the allegations set forth in Paragraph 7 of the Complaint,  
 23 Defendant admits that it is the lessee of the business operating as Ross Dress For Less #478.  
 24 Defendant denies each and every other allegation contained therein as they pertain to Ross Dress For  
 25 Less, Inc.

26       8. Answering the allegations set forth in Paragraph 8 of the Complaint,  
 27 Defendant denies each and every allegation contained therein as they pertain to Ross Dress For Less,  
 28 Inc.

1                 9. Answering the allegations set forth in Paragraph 9 of the Complaint,  
 2 Defendant denies each and every allegation contained therein.

3                 10. Answering the allegations set forth in Paragraph 10 of the Complaint,  
 4 Defendant denies each and every allegation contained therein as they pertain to Ross Dress For Less,  
 5 Inc.

6                 11. Answering the allegations set forth in Paragraph 11 of the Complaint,  
 7 Defendant denies each and every other allegation contained therein.

8                 12. Answering the allegations set forth in Paragraph 12, Defendant lacks  
 9 sufficient information and belief upon which to admit or deny the allegations and, based on that  
 10 ground, denies generally and specifically those allegations.

11                 13. Answering the allegations set forth in Paragraph 13 of the Complaint,  
 12 Defendant lacks sufficient information and belief upon which to admit or deny the allegations and,  
 13 based on that ground, denies generally and specifically those allegations.

14                 14. Answering the allegations set forth in Paragraph 14 of the Complaint  
 15 Defendant denies each and every other allegation contained therein.

16                 15. Answering the allegations set forth in Paragraph 15 of the Complaint  
 17 Defendant denies each and every other allegation contained therein.

18                 16. Answering the allegations set forth in Paragraphs 16 through 18 of the  
 19 Complaint, these paragraphs allege conduct against parties other than this defendant, and so no  
 20 response thereto is necessary. To the extent that a response is required by this Defendant, Defendant  
 21 lacks sufficient information and belief upon which to admit or deny the allegations with respect to  
 22 such other parties and, based on that ground, denies generally and specifically that allegation.  
 23 Defendant denies each and every allegation contained therein as they pertain to Ross Dress For Less,  
 24 Inc.

25                 17. Answering the allegations set forth in Paragraph 19 of the Complaint,  
 26 Defendant denies that Plaintiff encountered any barriers or was denied access to the Ross facility due  
 27 to any fault or responsibility of the Defendant. Defendant denies each and every other allegation  
 28 contained therein.

1               18. Answering the allegations set forth in Paragraph 20 of the Complaint,  
 2 Defendant denies each and every allegation contained therein.

3               19. Answering the allegations set forth in Paragraph 21 of the Complaint,  
 4 Defendant denies each and every allegation contained therein.

5               20. Answering the allegations set forth in Paragraph 22 of the Complaint,  
 6 Defendant denies each and every allegation contained therein.

7               21. Answering the allegations set forth in Paragraph 23 of the Complaint,  
 8 Defendant denies each and every allegation contained therein.

9               22. Answering the allegations set forth in Paragraph 24 of the Complaint, these  
 10 allegations do not require a response. To the extent a response is necessary, Defendant denies each  
 11 and every allegation contained therein.

12               23. Answering the allegations set forth in Paragraph 25 of the Complaint, these  
 13 allegations do not require a response. To the extent a response is necessary, Defendant denies each  
 14 and every allegation contained therein.

15               24. Answering the allegations set forth in Paragraph 26 of the Complaint, the  
 16 allegations in Paragraph 26 are legal conclusions or recitations of the law as alleged by Plaintiff, and  
 17 as such, they do not require a response. In addition, the statutory language set forth in 42 U.S.C. §  
 18 12182(a), §§ 12182(b)(2)(A)(iv) and 12188 speaks for itself. To the extent that a response may be  
 19 required, Defendant denies each and every allegation contained therein.

20               25. Answering the allegations set forth in Paragraph 27 of the Complaint,  
 21 Defendant denies each and every allegation contained therein.

22               26. Answering the allegations set forth in Paragraph 28 of the Complaint,  
 23 Defendant denies each and every allegation contained therein.

24               27. Answering the allegations set forth in Paragraph 29 of the Complaint,  
 25 Defendant denies each and every allegation contained therein.

26               28. Answering the allegations set forth in Paragraph 30 of the Complaint,  
 27 Defendant denies each and every allegation contained therein.

28               29. Answering the allegations set forth in Paragraph 31 of the Complaint,

1       Defendant denies each and every allegation contained therein.

2           30.     Answering the allegations set forth in Paragraph 32 of the Complaint,  
 3       Defendant denies each and every allegation contained therein.

4           31.     Answering the allegations set forth in Paragraph 33 of the Complaint,  
 5       Defendant denies each and every allegation contained therein.

6           32.     Answering the allegations set forth in Paragraph 34 of the Complaint,  
 7       Defendant denies each and every allegation contained therein.

8           33.     Answering the allegations set forth in Paragraph 35 of the Complaint, this is a  
 9       prayer for relief and no response is required.

10          34.     Answering the allegations set forth in Paragraph 36 of the Complaint,  
 11       Defendant denies each and every allegation contained therein.

12          35.     Answering the allegations set forth in Paragraph 37 of the Complaint,  
 13       Defendant denies each and every allegation contained therein.

14          36.     Answering the allegations set forth in Paragraph 38 of the Complaint,  
 15       Defendant denies each and every allegation contained therein.

16          37.     Answering the allegations set forth in Paragraph 39 of the Complaint,  
 17       Defendant denies each and every allegation contained therein.

18          38.     Answering the allegations set forth in Paragraph 40 of the Complaint,  
 19       Defendant denies each and every allegation contained therein.

20          39.     Answering the allegations set forth in Paragraph 41 of the Complaint, this is a  
 21       prayer for relief and no response is required.

22          40.     Answering the allegations set forth in Paragraph 42 of the Complaint,  
 23       Defendant denies each and every allegation contained therein.

24          41.     Answering the allegations set forth in Paragraph 43 of the Complaint,  
 25       Defendant denies each and every allegation contained therein.

26          42.     Answering the allegations set forth in Paragraph 44 of the Complaint, this is a  
 27       prayer for relief and no response is required. To the extent that a response is required by this  
 28       Defendant, Defendant denies each and every allegation contained therein as they pertain to Ross

Dress For Less, Inc.

43. Answering the allegations set forth in Paragraph 45 of the Complaint, this is a prayer for relief and no response is required. To the extent that a response is required by this Defendant, Defendant denies each and every allegation contained therein as they pertain to Ross Dress For Less, Inc.

44. Answering the allegations set forth in the Demand For Judgment For Relief, Defendant denies that plaintiff was damaged in any manner by Defendant's conduct and further denies that Plaintiff is entitled to injunctive relief, damages or attorneys' fees or costs, or for any other relief or remedy. The remaining allegations are requests for relief and as such require no response. However, to the extent a response is required, Defendant denies each and every allegation contained therein.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

As a first, separate and distinct affirmative defense, Defendant alleges that the Complaint, and each claim for relief stated therein, fails to state facts sufficient to constitute any cause of action or claim upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

As a second, separate and distinct affirmative defense, Defendant alleges that even if the establishments at issue were designed, developed, constructed, modified and/or altered in violation of the Americans With Disabilities Act (“ADA”) or California law, Defendant had no such knowledge.

## THIRD AFFIRMATIVE DEFENSE

As a third, separate and distinct affirmative defense, Defendant alleges that any conduct which may have occurred was not because of Plaintiffs' claimed disability and/or as Plaintiffs were not bona fide customers of the store. Instead, if Plaintiffs visited the facility, they did so for the sole and primary purpose of instituting the instant litigation.

#### FOURTH AFFIRMATIVE DEFENSE

As a fourth, separate and distinct affirmative defense, Defendant alleges that

1 modifications to the facilities or establishments at issue necessary to make the facilities or  
 2 establishments accessible, if any, are not readily achievable and/or feasible.

3 FIFTH AFFIRMATIVE DEFENSE

4 As a fifth, separate and distinct affirmative defense, Defendant alleges that the cost of  
 5 some or all of the modifications to the subject properties that Plaintiffs seeks to have imposed upon  
 6 Defendant is disproportionate in terms of cost and scope to that of any alterations made within the  
 7 statutory period, if any.

8 SIXTH AFFIRMATIVE DEFENSE

9 As a sixth, separate and distinct affirmative defense, Defendant alleges that requiring  
 10 some or all of the modifications to the subject properties that Plaintiffs seeks to have imposed upon  
 11 Defendant would fundamentally alter the nature of the subject properties.

12 SEVENTH AFFIRMATIVE DEFENSE

13 As a seventh, separate and distinct affirmative defense, Defendant alleges that  
 14 Plaintiffs has equal access to the facilities and establishment at issue as non-disabled individuals.

15 EIGHTH AFFIRMATIVE DEFENSE

16 As an eighth, separate and distinct affirmative defense, Defendant alleges that it  
 17 fulfilled any obligation it may have to reasonably accommodate Plaintiffs' alleged disability under  
 18 the ADA.

19 NINTH AFFIRMATIVE DEFENSE

20 As a ninth, separate and distinct affirmative defense, Defendant alleges that its  
 21 services and/or facilities provided to the public are accessible to and usable by persons with  
 22 disabilities as required by California law including, but not limited to, Civil Code §§ 51, 52, 54,  
 23 54.1, 54.3, and 55.

24 TENTH AFFIRMATIVE DEFENSE

25 As a tenth, separate and distinct affirmative defense, Defendant alleges that its  
 26 services and/or facilities provided to the public are accessible to and usable by persons with  
 27 disabilities as required by federal law including, but not limited to, the ADA.

28 ///

## ELEVENTH AFFIRMATIVE DEFENSE

As an eleventh, separate and distinct affirmative defense, Defendant alleges that it did not deny Plaintiffs full and equal access to goods, services, facilities, privileges, advantages or accommodations within a public accommodation owned, leased, and/or operated by Defendant as required by federal law including, but not limited to, the ADA.

## TWELFTH AFFIRMATIVE DEFENSE

As a twelfth, separate and distinct affirmative defense, Defendant alleges that it did not deny Plaintiffs full and equal access to goods, services, facilities, privileges, advantages or accommodations within a public accommodation owned, leased, and/or operated by Defendant as required by California law including, but not limited to, Civil Code §§ 51, 52, 54, 54.1, 54.3, and 55.

## THIRTEENTH AFFIRMATIVE DEFENSE

As a thirteenth, separate and distinct affirmative defense, Defendant alleges that it granted access to its facilities to Plaintiffs but ultimately any exclusion of Plaintiffs from its facilities, if that did occur, was for reasons rationally related to the services performed and the facilities provided by Defendant.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth, separate and distinct affirmative defense, Defendant alleges that it had legitimate, non-discriminatory reasons for any and all actions taken with respect to Plaintiffs.

## FIFTEENTH AFFIRMATIVE DEFENSE

As a fifteenth, separate and distinct affirmative defense, Defendant alleges that Civil Code §§ 54.3 and 55, providing for public prosecution and private injunctive relief for violations of Civil Code § 54.1, are to be exclusive and damages provided for by Civil Code § 52 are not recoverable for such violations.

## SIXTEENTH AFFIRMATIVE DEFENSE

As a sixteenth, separate and distinct affirmative defense, Defendant alleges that Civil Code §§ 54.1 and 53 do not create a private cause of action for damages for asserted discrimination, and Civil Code § 55 provides only a private action enjoining such statutory violation.

111

SEVENTEENTH AFFIRMATIVE DEFENSE

As a seventeenth, separate and distinct affirmative defense, Defendant alleges that it owed no duty of care toward Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

As an eighteenth, separate and distinct affirmative defense, Defendant alleges that the Complaint and each and every cause of action alleged therein is barred by the doctrines of waiver, estoppel, unclean hands and/or laches.

NINETEENTH AFFIRMATIVE DEFENSE

As a nineteenth separate and distinct affirmative defense, Defendant alleges that Plaintiffs did not exercise due caution or care with respect to the matters alleged in the Complaint and if, in fact, Plaintiffs suffered any damage or injury, Plaintiffs contributed in whole or in part to such damage or injury and, therefore, any remedy or recovery to which Plaintiffs might otherwise be entitled must be denied or reduced accordingly.

TWENTIETH AFFIRMATIVE DEFENSE

As a twentieth, separate and distinct affirmative defense, Defendant alleges that the portions of the establishment inaccessible to Plaintiffs, if any, are not places of public accommodation.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As a twenty-first, separate and distinct affirmative defense, Defendant alleges that the Complaint and each and every cause of action alleged therein is barred in that all times relevant hereto, Defendants acted reasonably, in good faith and without malice, based upon the relevant facts and circumstances known to them at the time it acted, if at all.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As a twenty-second, separate and distinct affirmative defense, Defendant alleges that Plaintiffs consented to all actions taken, if any, and Defendants' actions, if any, were therefore privileged.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a twenty-third, separate and distinct affirmative defense, Defendant alleges that it

provided Plaintiffs with alternative methods for access to the facility.

#### TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a twenty-fourth, separate and distinct affirmative defense, Defendant alleges that the cause of action asserting negligence is barred inasmuch as the remedies provided by the statutes set forth in that cause of action are the exclusive remedy for alleged violations of said statutes.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

As a twenty-fifth, separate and distinct affirmative defense, Defendant alleges that Plaintiffs has failed to exhaust the administrative remedies available to them.

## TWENTY-SIXTH AFFIRMATIVE DEFENSE

As a twenty-sixth, separate and distinct affirmative defense, Defendant alleges that Plaintiffs' claims for relief are barred by the applicable statutes of limitations.

## TWENTY-SEVENTH AFFIRMATIVE DEFENSE

As a twenty-seventh, separate and distinct affirmative defense, Defendant alleges that Plaintiffs failed to mitigate their damages in this matter.

## TWENTY-EIGHTH AFFIRMATIVE DEFENSE

As a twenty-eighth, separate and distinct affirmative defense, Defendant alleges that Plaintiffs failed to allege special damages with the requisite specificity.

## TWENTY-NINTH AFFIRMATIVE DEFENSE

As a twenty-ninth, separate and distinct affirmative defense, Defendant alleges that Plaintiffs' alleged injuries and alleged damages, if any, were proximately caused and contributed to by the negligence of Plaintiffs.

THIRTIETH AFFIRMATIVE DEFENSE

As a thirtieth, separate and distinct affirmative defense, Defendant alleges that Plaintiffs failed to state facts sufficient to constitute a cause of action for which punitive or exemplary damages may be awarded against Defendants.

## THIRTY-FIRST AFFIRMATIVE DEFENSE

As a thirty-first, separate and distinct affirmative defense, Defendant alleges that the provisions Plaintiffs relies upon for an award of punitive or exemplary damages, and the substantive

1 rules and procedures and standards for determining the amount and/or whether or not to award such  
 2 damages, and if so, in what amount, violates the due process and equal protection rights of  
 3 Defendants under the Constitutions of the United States and the State of California.

4 THIRTY-SECOND AFFIRMATIVE DEFENSE

5 As a thirty-second, separate and distinct affirmative defense, Defendant alleges that  
 6 the alleged acts to which Plaintiffs refer which form the basis of Plaintiffs' Complaint were done, if  
 7 at all, in good faith, honestly, and without malice and have not violated any rights Plaintiffs may  
 8 have under federal, state or local laws, rules, regulations or guidelines.

9 THIRTY-THIRD AFFIRMATIVE DEFENSE

10 As a thirty-third, separate and distinct affirmative defense, Defendant alleges that  
 11 Plaintiffs is not legally entitled to recover any attorneys' fees with regard to this matter.

12 THIRTY-FOURTH AFFIRMATIVE DEFENSE

13 As a thirty-fourth, separate and distinct affirmative defense, Defendant alleges that  
 14 Defendant relied in good faith upon the permissible, reasonable interpretations of California and  
 15 federal law by local building authorities and issuance of building permits and Certificates of  
 16 Occupancy for the facility.

17 THIRTY-FIFTH AFFIRMATIVE DEFENSE

18 As a thirty-fifth, separate and distinct affirmative defense, Defendant alleges that  
 19 Defendant relied in good faith upon the advice of architects with respect to the facility.

20 THIRTY-SIXTH AFFIRMATIVE DEFENSE

21 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's  
 22 claims are barred and/or damages are not recoverable because Plaintiff is and/or should be declared a  
 23 "vexatious litigant," and as such, this Court should enter an OSC re why this case should not be  
 24 dismissed and/or why sanctions should not be imposed against Plaintiff and/or her attorney.

25 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's  
 27 claims are barred and/or damages are not recoverable because Plaintiff is and/or should be declared a  
 28 sham plaintiff and her attorney is and/or should be declared a "vexatious litigant," and as such, this  
 Firmwide: 84949868.1 022233.2185

1 Court should enter an OSC re why this case should not be dismissed and/or why sanctions should  
 2 not be imposed against Plaintiff and/or her attorney.

3 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

4 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's  
 5 claims are barred and/or damages are not recoverable because Plaintiff and/or her attorney is or  
 6 should be declared a "vexatious litigant," and as such, this Court should dismiss this case with  
 7 prejudice and enter an order prohibiting Plaintiff and/or her attorney (on behalf of Plaintiff and any  
 8 other future plaintiffs), to seek permission from the district court through a court order before filing  
 9 any ADA Title III or related disability access lawsuits based on alleged violations of federal and/or  
 10 state law.

11 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

12 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff lacks  
 13 standing to assert a claim for denial of accessible sanitary facilities in violation of California Health  
 14 & Safety Code §§ 19955 et seq., because there is no private right of action thereunder. California  
 15 Health & Safety Code §19958.5.

16 **FORTIETH AFFIRMATIVE DEFENSE**

17 Defendant alleges that an award of punitive damages is unconstitutional as it violates  
 18 the due process clause of the California and the United States Constitutions.

19 **FORTY-FIRST AFFIRMATIVE DEFENSE**

20 Answering defendant alleges that it may have other separate and/or additional  
 21 defenses of which it are is not aware and hereby reserves the right to assert them by amendment to  
 22 this answer as discovery continues.

23 **FORTY-SECOND AFFIRMATIVE DEFENSE**

24 Defendant alleges that plaintiff cannot certify a class because there are not enough  
 25 putative class members who were similarly situated to the plaintiff during the applicable statute of  
 26 limitations period.

27 **FORTY-THIRD AFFIRMATIVE DEFENSE**

28 As a separate and distinct affirmative defense, Defendant alleges that under the terms

1 of its lease agreements, responsibility for compliance with all federal, state, and local laws regarding  
 2 access and use of the premises by persons with disabilities has been allocated to third person(s) (i.e.,  
 3 tenant, landlord, etc.) who are solely responsible for any affirmative obligations to make the  
 4 premises accessible to persons with disabilities.

5 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

6 As a separate and distinct affirmative defense, Defendant alleges that plaintiff cannot  
 7 certify a class because predominant questions of fact do not exist as to all putative class members.

8 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

9 As a separate and distinct affirmative defense, Defendant alleges that plaintiff cannot  
 10 certify a class because her claims are neither typical of the putative class, nor can she adequately  
 11 represent the putative class because she has interests which inherently conflict with the interests of  
 12 the putative class.

13 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

14 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff cannot  
 15 assert a representative action, because she is an inadequate representative plaintiff for the proposed  
 16 representative class.

17 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

18 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff cannot  
 19 assert a representative action, because her counsel is an inadequate advocate.

20 WHEREFORE, Defendant prays as follows:

21 1. That Plaintiffs' Complaint and each claim for relief therein be dismissed in its  
 22 entirety with prejudice;

23 2. Plaintiffs take nothing by way of their Complaint and each claim for relief  
 24 therein;

25 3. Defendant be awarded its costs of suit and reasonable attorneys' fees incurred  
 26 herein;

27 ///

28 ///

4. That the Court order such other and further relief for Defendants as the Court may deem just and proper.

Dated: April 18, 2008

/s/John M. Julius III  
JOHN M. JULIUS III  
E-Mail: jjulius@littler.com  
LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendant  
ROSS STORES INC. d.b.a. ROSS DRESS  
FOR LESS #48

## **PROOF OF SERVICE BY MAIL**

I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900, San Diego, California 92101-3577. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On April 18, 2008, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

DEFENDANT ROSS STORES, INC.'S ANSWER TO COMPLAINT  
AND AFFIRMATIVE DEFENSES

in a sealed envelope, postage fully paid, addressed as follows:

Theodore A. Pinnock, Esq.  
David C. Wakefield, Esq.  
Michelle L. Wakefield, Esq.  
3033 Fifth Avenue, Suite 410  
San Diego, CA 92103

Attorneys for Plaintiffs

Telephone: 619-858-3671  
Facsimile: 619-858-3646

Attorneys for Plaintiffs

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 18, 2008, at San Diego, California.

 Julie M. May

Julie M. May